

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Policy and Operations

4 (New Administrative Regulation)

5 907 KAR 8:040. Coverage of occupational therapy, physical therapy, and speech-  
6 language pathology services provided by various entities

7 RELATES TO: KRS 205.520

8 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R.  
9 440.130, 42 U.S.C. 1396a(a)(30)

10 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family  
11 Services, Department for Medicaid Services, has a responsibility to administer the Med-  
12 icaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to  
13 comply with any requirement that may be imposed or opportunity presented by federal  
14 law to qualify for federal Medicaid funds. This administrative regulation establishes the  
15 Medicaid Program coverage provisions and requirements regarding occupational thera-  
16 py services, physical therapy services, and speech-language pathology services pro-  
17 vided by adult day health care programs, rehabilitation agencies, special health clinics,  
18 mobile health service, multi-therapy agencies, and comprehensive outpatient rehabilita-  
19 tion facilities to Medicaid recipients.

20 Section 1. Provider Participation. To be eligible to provide and be reimbursed for ser-

vices covered under this administrative regulation, a provider shall be:

(1) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(2) Currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

(3)(a) An adult day health care program;

(b) A multi-therapy agency;

(c) A comprehensive outpatient rehabilitation facility;

(d) A mobile health service;

(e) A special health clinic; or

(f) A rehabilitation agency.

Section 2. Coverage of Services. (1) The services covered under this administrative regulation include:

(a) Physical therapy;

(b) Occupational therapy; or

(c) Speech-language pathology services.

(2) To be covered under this administrative regulation a service shall be:

(a) Provided to a recipient:

(b) By:

1. An occupational therapist who renders services on behalf of a provider listed in Section 1(3) of this administrative regulation;

2. A physical therapist who renders services on behalf of a provider listed in Section 1(3) of this administrative regulation;

1 3. A speech-language pathologist who renders services on behalf of a provider listed  
2 in Section 1(3) of this administrative regulation;

3 4. An occupational therapy assistant who renders services:

4 a. Under supervision in accordance with 201 KAR 28:130; and

5 b. On behalf of a provider listed in Section 1(3) of this administrative regulation;

6 5. A physical therapist assistant who renders services:

7 a. Under supervision in accordance with 201 KAR 22:053; and

8 b. On behalf of a provider listed in Section 1(3) of this administrative regulation;

9 6. A speech-language pathology clinical fellow who renders services:

10 a. Under the supervision of a speech-language pathologist; and

11 b. On behalf of a provider listed in Section 1(3) of this administrative regulation;

12 (c) Ordered:

13 1. By:

14 a. A physician currently participating in the Medicaid Program in accordance with 907  
15 KAR 1:671;

16 b. An advanced practice registered nurse currently participating in the Medicaid Pro-  
17 gram in accordance with 907 KAR 1:671; or

18 c. A physician assistant currently participating in the Medicaid Program in accordance  
19 with 907 KAR 1:671; and

20 2. For:

21 a. A specific amount and duration; and

22 b.(i) Maximum reduction of the effects of a physical or intellectual disability; or

23 (ii) Restoration of a recipient to the recipient's best possible functioning level;

1 (d) Medically necessary; and

2 (e) Prior authorized by the department.

3 (2)(a) There shall be an annual limit of twenty (20):

4 1. Occupational therapy service visits per recipient per calendar year except as es-  
5 tablished in paragraph (b) of this subsection;

6 2. Physical therapy service visits per recipient per calendar year except as estab-  
7 lished in paragraph (b) of this subsection; and

8 3. Speech-language pathology service visits per recipient per calendar year except  
9 as established in paragraph (b) of this subsection.

10 (b) The limit established in paragraph (a) of this subsection may be exceeded if ser-  
11 vices in excess of the limits are determined to be medically necessary by the:

12 1. Department, if the recipient is not enrolled with a managed care organization; or

13 2. Managed care organization in which the enrollee is enrolled, if the recipient is an  
14 enrollee.

15 (c) Prior authorization by the department shall be required for each service visit that  
16 exceeds the limit established in paragraph (a) of this subsection for a recipient who is  
17 not enrolled with a managed care organization.

18 Section 3. Documentation, Records Maintenance, Protection, and Security. (1) A  
19 provider shall maintain a current health record for each recipient.

20 (2) A health record shall:

21 (a) Document the provider's initial assessment of the recipient and any subsequent  
22 assessments;

23 (b) Document each service provided to the recipient; and

1 (c) Include detailed staff notes that state:

2 1. Progress made toward outcomes identified according to the provider's assessment  
3 and in the physician's order, advanced practice registered nurse's order, or physician  
4 assistant's order;

5 2. The date of each service;

6 3. The beginning and ending time of each service; and

7 4. The signature and title of the individual providing each service.

8 (3) The individual who provides a service shall date and sign the health record on the  
9 date that the individual provides the service.

10 (4)(a) Except as established in paragraph (b) of this subsection, a provider shall  
11 maintain a health record regarding a recipient for at least six (6) years from the date of  
12 the service or until any audit dispute or issue is resolved beyond six (6) years.

13 (b) If the secretary of the United States Department of Health and Human Services  
14 requires a longer document retention period than the period referenced in paragraph (a)  
15 of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary  
16 shall be the required period.

17 (5) A provider shall comply with 45 C.F.R. Part 164.

18 Section 4. Medicaid Program Participation Compliance. (1) A provider shall comply  
19 with:

20 (a) 907 KAR 1:671;

21 (b) 907 KAR 1:672; and

22 (c) All applicable state and federal laws.

23 (2)(a) If a provider receives any duplicate payment or overpayment from the depart-

ment, regardless of reason, the provider shall return the payment to the department in accordance with 907 KAR 1:671.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

Section 5. No Duplication of Service. (1) The department shall not reimburse for an occupational therapy service, physical therapy service, or speech-language pathology service provided to a recipient by more than one (1) provider of any program in which the respective service is covered during the same time period.

(2) For example, if a recipient is receiving an occupational therapy service from a multi-therapy agency enrolled with the Medicaid Program, the department shall not reimburse for the same occupational therapy service provided to the same recipient during the same time period via the home health program.

Section 6. Third Party Liability. A provider shall comply with KRS 205.622.

Section 7. Out-of-State Providers. The department shall cover a service under this administrative regulation that is provided by an out-of-state provider if the:

(1) Service meets the coverage requirements of this administrative regulation; and

(2) The provider:

(a) Complies with the requirements of this administrative regulation; and

(b) Is:

1.a. Licensed as an adult day health care program in the state in which it is located;

b. A comprehensive outpatient rehabilitation facility licensed in the state in which it is

located;

c. Licensed as a mobile health service in the state in which it is located;

d. A special health clinic licensed in the state in which it is located;

e. A rehabilitation agency licensed in the state in which it is located;

f. An occupational therapist or occupational therapist group;

g. A physical therapist or physical therapist group;

h. A speech-language pathologist or speech-language pathologist group; or

i. A multi-therapy agency;

2. Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

3. Currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671.

Section 8. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;
2. Attest to the signature's authenticity; and
3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department with:

1. A copy of the provider's electronic signature policy;
2. The signed consent form; and
3. The original filed signature immediately upon request.

Section 9. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with any claim or medical record.

Section 10. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 11. Appeals. An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.



907 KAR 8:040

REVIEWED:

---

Date

---

Lisa Lee, Commissioner  
Department for Medicaid Services

APPROVED:

---

Date

---

Audrey Tayse Haynes, Secretary  
Cabinet for Health and Family Services

907 KAR 8:040

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall, if requested, be held on January 21, 2016 at 9:00 a.m. in Suite A of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621. Individuals interested in attending this hearing shall notify this agency in writing January 13, 2016, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business February 1, 2016. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, [tricia.orme@ky.gov](mailto:tricia.orme@ky.gov), Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, (502) 564-7905, Fax: (502) 564-7573.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation Number: 907 KAR 8:040  
Cabinet for Health and Family Services  
Department for Medicaid Services  
Agency Contact Person: Stuart Owen (502) 564-4321

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes the coverage provisions regarding occupational therapy, physical therapy, and speech language pathology services provided to Medicaid recipients by adult day health care programs, multi-therapy agencies (any combination of physical therapists, occupational therapists, speech-language pathologists), comprehensive outpatient rehabilitation facilities (CORFs), rehabilitation agencies, special health clinics, and mobile health services.
  - (b) The necessity of this administrative regulation: This administrative regulation is necessary to expand the physical therapy, occupational therapy, and speech-language pathology service provider base to ensure Medicaid recipient access to the associated services.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by enhancing Medicaid recipient access to care as federally mandated.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by enhancing Medicaid recipient access to care as federally mandated.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
  - (a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
  - (b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
  - (c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
  - (d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Adult day health care programs, occupational therapists, physical therapists, speech-language pathologists, multi-therapy agencies (combination of occupational therapists, physical therapists, and speech-language pathologists), comprehensive outpatient rehabilitation facilities (CORFs), rehabilitation agencies, mobile health ser-

vice providers, special health clinics, and recipients of the services will be affected by the administrative regulation.

- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
  - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Any entity that wishes to provide the services will need to enroll in the Medicaid Program as a provider and most likely join the provider network of managed care organizations as many recipients of the services will be enrolled with a managed care organization.
  - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed; however, entities may experience administrative costs associated with enrolling in the Medicaid Program.
  - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Entities will benefit by being eligible to receive Medicaid reimbursement for providing the services. Medicaid recipients will benefit from having an expanded array of providers from which to receive the services.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
  - (a) Initially: The cost is indeterminable as the Department for Medicaid Services is unable to predict how many organizations authorized by this administrative regulation to enroll in the Medicaid program and provide occupational therapy, physical therapy, or speech-language pathology services will elect to do so. DMS is also unable to forecast how many Medicaid recipients will elect to receive these services from the aforementioned providers rather than from the existing pool of providers of these services.
  - (b) On a continuing basis: The answer in paragraph (a) above also applies here.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and state matching funds comprised of general fund and restricted fund appropriations.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding are necessary.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor directly nor indirectly increases any fees.

- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used) Tiering is neither applied nor necessary as the provisions in this administrative regulation apply equally to the affected parties.

## FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation Number: 907 KAR 8:040  
Agency Contact Person: Stuart Owen (502) 564-4321

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30).
2. State compliance standards. KRS 194A.030(2) states, "The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal Social Security Act."
3. Minimum or uniform standards contained in the federal mandate. There is a federal mandate to ensure recipient access to services covered by the state's Medicaid program. As the Department for Medicaid Services (DMS) covers occupational therapy, physical therapy, and speech-language pathology services it must ensure that an adequate provider base exists to ensure recipient access to care. A relevant federal law – 42 U.S.C. 1396a(a)(30) requires a state's Medicaid program to "provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

Expanding the base of authorized providers comports with the intent of the aforementioned federal law.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation Number: 907 KAR 8:040

Agency Contact Person: Stuart Owen (502) 564-4321

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by this administrative regulation.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 1396a(a)(30) and KRS 194A.030(2).
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
  - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.
  - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.
  - (c) How much will it cost to administer this program for the first year? The cost is indeterminable as the Department for Medicaid Services is unable to predict how many organizations authorized by this administrative regulation to enroll in the Medicaid program and provide occupational therapy, physical therapy, or speech-language pathology services will elect to do so. DMS is also unable to forecast how many Medicaid recipients will elect to receive these services from the aforementioned providers rather than from the existing pool of providers of these services.
  - (d) How much will it cost to administer this program for subsequent years? The response in paragraph (c) above also applies here.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: